IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14409 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M.M.P.CHARITABLE TRUST THR' ITS MANAGING TRUSTEE - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MR RR MARSHALL for Petitioner(s) : 1,
Mr. MR Mengdey, AGP for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/09/2005

ORAL JUDGMENT

Rule. By way of this petition under Article 226 of the Constitution of India, the petitioner Trust has prayed for an appropriate writ, direction

or order quashing and setting aside the part of Town Planning Scheme No. 14 [Rander Adjan] which provides a road through playground bearing Survey No. 212/B, 213 and 216 (1+2) of the School owned by the petitioner Trust. It is further prayed to quash and set aside the Resolution dated 7.12.2004 passed by the Town Planning Committee of the Surat Municipal Corporation rejecting the petitioner's application for variation in the scheme.

2. It is the case of the petitioner that the petitioner Trust is running the School imparting eduction and the school building and other properties constructed thereon are situate in Survey No. 212-B, 213 and 216 (1+2) in Rander at Surat. It is the case on behalf of the petitioner that all the schools have a common playground situate in said Survey Nos. 212-B, 213 ad 216(1+2). It is also the case on behalf of the petitioner that original area of the ground was about 22000 sq.yards out of which 1200 sq.yards were acquired by Surat Municipal Corporation for running of a slaughter house and subsequently over 3000 sq.yards have been acquired for widening the road and

the ground now is admeasuring approximately 7000 sq.yds., only. It is the contention on behalf of the petitioner that in the draft Town Planning Scheme No. 14 (Rander-Adjan) a T.P. Road was proposed through the ground of the school, and as it was likely to affect sporting facilities, the petitioner preferred Special Civil Application No. 1456 of 1998 before this Court and this Court disposed of the said Special Civil Application as withdrawn as by Resolution passed by the Town Planning Committee of Surat Municipal Corporation recommended that the road should not pass from the playground of the school. It is the case on behalf of the petitioner that thereafter without any knowledge of the petitioner and without affording any hearing to the petitioner the matter proceeded further and the petitioner received a notice dated 27.8.2001 purported to be a notice under Section 68 of the Town Planning Act and asked the petitioner to vacate the said land within 7 days and hand over vacant possession. It is the case of the petitioner that the petitioner represented against the said notice and met the concerned Minister, Collector, and Town Planning Officer and

submitted that the road in question can easily pass through the lands of the adjoining slaughter house which was also originally belonging to the petitioner which has been acquired, without causing any difficulty to the playgrounds of the petitioner's schools. It is the case of the petitioner that assurances were given to the management that needful would be done and the road would be shifted so as not to disturb the petitioner institution. It is also the case on behalf of the petitioner that there were necessary correspondence between the Collector and the Town Planning Department also. It is the case on behalf of the petitioner that in the original-scheme the road was not passing through the playgrounds of the schools but was passing from another side, however now in the area between the schools and the South of the school huge buildings have come up and it is to accommodate the organisers of the said buildings that the road has been changed and it is now made to pass through the playgrounds of the schools. It is the case on behalf of the petitioner that inspite of the aforesaid, on 19.2.2004 when the schools were working the employees of the respondent

Corporation arrived with bull-dozer, broke down the wall of the school; and therefore the petitioner had preferred Special Civil Application No. 2185 of 2004 before this Court. Initially this Court issued notice and granted interim relief restraining the respondents to carry out any bull-dozing activity within the school premises and granted relief of restraining the respondents from entering into the playground of the school. It is the case on behalf of the petitioner that subsequently during the pendency of the matter the Corporation made a request that it was utmost necessary to lay drainage lines and as a result the petitioner relented to the effect that the drainage lines may be laid but the road would not be made and ultimately the said Special Civil Application came to be disposed of by order dated 16.8.2004 observing that the petitioner had already moved a representation for variation of the scheme and the petitioner may further file a supplementary representation also, directed the Surat Municipal Corporation to take an appropriate decision on the application for variation of the scheme qua lands in question and until the exercise was done the

parties were directed to maintain status-quo. It, thus, appears from the record that the petitioner received communication dated 9.2.2005 from the Director of Planning along with Resolution of the Town Planning Committee dated 7.12.2004 to the effect that their application for variation in the Town Planning Scheme qua the road going through the playground has been rejected and would not be forwarded to the State Government. Being aggrieved and dissatisfied with the aforesaid Resolution dated 7.12.2004 in rejecting the application of the petitioner for variation in the Town Planning Scheme qua the road going through the playground of the schools, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri RR Marshall, learned advocate appearing on behalf of the petitioner has vehemently submitted that the road in question can easily go through the F.P. No. 61 which was originally acquired for a Pumping Station and there is no Pumping Station presently on F.P. No. 61 which is lying unused and it

is just adjacent to the school, i.e., the petitioner' plot and even earlier also the resolution was passed by the Town Planning Committee in the year 2000 for variation of the scheme and inspite of the fact that there are same set of circumstances the present resolution has been passed rejecting the application of the petitioner for variation which is absolutely arbitrary. It is further submitted that the petitioner has lost the right of challenging the scheme/making grievance which could have been considered prior to the final Town Planning Scheme. It is further submitted by him that the impugned resolution passed by the Corporation is contrary to the unwritten spirit of compromise that was arrived at in the former petition before this Court whereby the petitioner has permitted that drainage line should be laid and stay of the Court should be modified to that effect and on the other hand the Corporation would try its best to see that the scheme is varied and that the road may not pass through the grounds of the school. Thus it is the allegation on the part of the petitioner that the Corporation has gone back from its unwritten understanding. It is

also further submitted by him that if the action is arbitrary this Court should interfere and even if a limited jurisdiction is there the Town Planning Scheme can be set aside qua the lands in question. It is further submitted by him that before passing the aforesaid resolution no opportunity of hearing was given to the petitioner and the reasons which are mentioned in the impugned resolution are not correct. It is therefore requested to allow the present Special Civil Application. The sum and substance of the submissions and the reliefs prayed for by the petitioner is that the Town Planning Scheme which has become final should be varied and the Town Planning Road under the finalised Town Planning Scheme should be shifted.

4. Per contra, Shri P.G. Desai, learned advocate appearing on behalf of the Surat Municipal Corporation, while relying upon the affidavit-in-reply, has requested to dismiss the present Special Civil Application. It is submitted that the petitioner was holding Revenue Survey No. 212-B, 213 and 216 (1+2) which were given O.P. No. 86 in the

Town Planning Scheme No.14 (Rander-Adjan) and the said land was admeasuring 22056 sq.mtrs. It is submitted in the reply that against the said O.P., two Final Plots were allotted bearing F.P. Nos. 60 and 61 admeasuring 18116 sq.mtrs. It is further submitted that Final Plot No. 61 is under acquisition for drainage connection for Surat Municipal Corporation and therefore Final Plot No. 60 is allotted to the petitioner which is admeasuring 17,213 sq.mtrs. It is further submitted that in the proposed road no construction of the petitioner is affected. Not only that even a large portion is available as open ground in Final Plot No. 60 and he has relied upon the Map for that purpose. He has specifically denied that original area of ground was about 22000 sq.yards which is now approximately 7000 sq.yds. Only as alleged. It is specifically denied by the respondent that in the said draft scheme the road was drawn through the grounds of schools which would have destroyed sporting facilities as alleged. It is further submitted that the Town Planning Committee of the Corporation earlier passed the Resolution No. 34 of 2000 resolving inter alia that

the road should not pass through the land of the schools and asked the Municipal Commissioner to communicate to the Urban Housing and Development Department, however the said request was not accepted by the State Government vide letter dated 17.11.2000. It is further submitted that the State Government thereafter issued notification under Section 65 of the Gujarat Town Planning and Urban Development Act on 17.11.2000 and has not made any change in respect of reservation made in the Town Planning Scheme. It is further submitted that in view of the scheme which was sanctioned on 17.11.2000 the Corporation is duty bound to implement the Town Planning Scheme and therefore the notice for change of possession was given under Section 67 to the petitioner along with notice under Section 68 read with Rule 33 of the Rules on 4.6.2001 and 27th August 2001 respectively. It is further submitted that even in the sanctioned development plan of 1996 the road is shown as per the Town Planning Scheme No. 14. It is further submitted that the letter was written on 7.2.2004 to implement the Town Planning Scheme and vacate the area of the road and inspite of the letter dated 7.2.2004 no

action was taken by the petitioner and therefore the compound wall and fencing were removed which were on 60 ft. T.P. Road on 19th February 2004. It is further submitted that the matter was discussed by the Town Planning Committee and after taking into consideration all the factors the Town Planning Committee has passed the impugned resolution. It is further submitted that the Town Planning Committee has also considered the fact that if the proposal made by the petitioner is accepted the building on F.P. No. 65 will be affected and reservation of the shopping centre made in FP No. 67 is required to be cancelled and it will not be in the interest of the Corporation to accept the proposal of the petitioner. It is further submitted that the Town Planning Officer appointed by the State Government made the Town Planning Scheme after considering the objections and suggestions of all the persons interested and that officer having technical knowledge has proposed the scheme which is ultimately sanctioned by the State Government. It is submitted that considering the subsequent development the Corporation has taken a conscious decision not to propose for variation of

the scheme more particularly in revised sanctioned development plan of 2004 the said road is also shown as per the Town Planning Scheme. It is further submitted that the Final Plot No. 61 is included in the land acquisition proceedings for drainage pumping station for Surat Municipal Corporation and not only that, on the said land there is a slaughter house, ST stand, godown etc., and in Final Plot No. 65 there are houses which are constructed where persons are residing and therefore looking to all the fact situation it was considered and decided that the Corporation should propose any variation in respect of the Town Planning Road. It is specifically denied by the respondents that the petitioner is entitled to get 935 sq.mtrs., of land as alleged in Para 11 of the petition.

5. Shri Desai, learned advocate appearing on behalf of the respondent Corporation, has submitted that at the time of making or proposing the scheme hearing is not required. He has further submitted that there is already a road even in the final development plan. Relying upon Section 17(3) of the

Act, it is submitted that the development plan is binding upon the Corporation and when in the final development plan the road is proposed then the same must be included in the Town Planning Scheme. It is therefore requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that there is a Final Town Planning Scheme and on finalisation of which the Town Planning Road is provided to pass through the lands originally belonging to the petitioner. It is also not in dispute that the petitioner is allotted Final Plot No. 60 admeasuring 17230 sq.mtrs., and Final Plot No. 61 admeasuring 886 sq.mtrs., of land against original holding of 22056 sq.mtrs., of land. Thus, the major portion of the land of the petitioner is Final Plot No. 60 admeasuring about 17230 sq.mtrs., of land. It is required to be noted at this stage that the entire Town Planning Scheme is implemented and the Town Planning Road is laid down except the disputed portion of the land in question only, i.e., the road

passing through the original Survey No. 213 and 216(1+2) and 212/B i.e., 3940 sq.mtrs. of land for which the present Special Civil Application is filed. It is also required to be noted that apart from the fact that the Town Planning Scheme has become final, even in the development plan also there is a road proposed which is as per the present final Town Planning Scheme. Considering the provisions of Section 17(3) of the Town Planning Act, a final development plan is binding on the Area Development Authority concerned and on all other authorities stationed in the area of development plan. The only and main contention on behalf of the petitioner is that the road in question can easily pass through the Final Plot No.61 which was originally acquired for a Pumping Station and the said Final Plot No.61 is at present lying unused which is just adjacent to the school and therefore the respondent Corporation ought to have accepted the application submitted by the petitioner for variation to that extent. It is required to be noted that it is the contention on behalf of the respondent Corporation, and so stated in the impugned resolution that the Final Plot No. 61

is included in the land acquisition proceedings for drainage pumping station for Surat Municipal Corporation and that on the said land there is a slaughter house, ST Stand, Godown etc., and in the Final Plot No. 65 there are houses which are constructed where some persons are residing and therefore if the proposal of the petitioner is accepted it is likely to affect other constructed houses on open piece of land provided in the Town Planning Scheme, and taking into consideration the above aspect a conscious decision has been taken by the respondent Corporation not to go for variation of the scheme. Considering the above, it cannot be said that the decision of the Town Planning Committee of the Corporation in rejecting the application of the petitioner for variation of the scheme is in any way arbitrary and/or malafide. It is required to be noted that it is ultimately for the Town Planning Authorities who are the best persons having technical knowledge to propose a road in the scheme and it is not for the Court to decide as to where the road should be proposed in the Town Planning Scheme. This Court is not sitting as an appellate authority

against the said decision taken by an expert body under the Town Planning Act.

7. It is the contention on behalf of the petitioner that earlier a Resolution was passed in the year 2000 and there are no changed circumstances and therefore there was no reason for the Corporation to pass the impugned Resolution rejecting the application of the petitioner for variation of the scheme. It is required to be noted that after the resolution of 2000 was passed, the matter went to the Government and after considering the aforesaid Resolution the State Government refused to vary the scheme. Considering the fact that other residential buildings are likely to be affected if the proposal of the petitioner is accepted, and considering the fact that except the disputed portion of the land/road the entire scheme has been implemented and the road is constructed, and when the resolution is passed to reject the application of the petitioner, it cannot be said that the same requires to be quashed and set aside. It is the contention on behalf of the petitioner that no hearing was given to

the petitioner while passing the resolution and/or taking the decision not to vary the scheme. Apart from the fact there is no such provision in the Act which provide for hearing, even in the earlier orders passed by this Court whereby the petitioner was relegated to make representation and the respondent Corporation was directed to consider the same, this Court did not pass any order granting hearing to the petitioner and the petitioner has never made any grievance that the petitioner was not provided the hearing. Under the circumstances, it is not open for the petitioner now to contend that no hearing was given to the petitioner. Even otherwise, considering the proposal for variation, no hearing is required to be given. Under the Act, the powers are vested in the Corporation to propose the scheme and even the State Government also cannot, without the proposal from the Corporation and/or the Area Development Authority, vary a scheme. When a conscious decision has therefore been taken by the Corporation not to vary the scheme after considering so many other factors which are hereinabove stated, no direction can be granted directing the Corporation to propose

for variation of the scheme and if such a direction is issued then it will go contrary to the Act. The only thing which requires consideration by this Court is whether there are justifiable reasons for not proposing variation in the Town Planning Scheme or not. It is required to be noted that the petitioner Trust and the School are having playgrounds in the F.P. No. 60 and it is so even stated in the Reply on behalf of the Corporation which is not disputed by the petitioner by way of Affidavit-in-Rejoinder.

8. For the reasons stated above, the petition fails and is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.